

32050
EB

SERVICE DATE - OCTOBER 19, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 182X)

UNION PACIFIC RAILROAD COMPANY—DISCONTINUANCE EXEMPTION—
IN WELD AND BOULDER COUNTIES, CO

Decided: October 16, 2001

By petition filed on July 2, 2001, the Union Pacific Railroad Company (UP) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over a 12.21-mile rail line segment between milepost 18.79, near Eagle Mine, and milepost 31.0, near Valmont, in Weld and Boulder Counties, CO. Pursuant to 49 U.S.C. 10502(b), the Board served and published a notice in the Federal Register (66 FR 38052) on July 20, 2001, instituting an exemption proceeding. We will grant the exemption, subject to environmental and standard employee protective conditions.

BACKGROUND

The segment that UP proposes to discontinue serving is part of its 33.17-mile Boulder Industrial Lead (Lead) that runs from Commerce City, located north of Denver, to Valmont, located east of Boulder, CO. Near the end of the Lead at Valmont, a spur runs south to a coal-burning power plant of the Public Service of Colorado (PSC). UP indicates that it had used the spur to serve PSC's plant until 1989, when PCS's coal traffic was diverted to the Burlington Northern Railroad Company (BN). BN's successor, The Burlington Northern and Santa Fe Railway Company (BNSF), currently serves PSC's plant from its main line. UP states that it intends to land-bank the track and right-of-way to serve PSC's plant in the future should the segment be needed.¹

In 1996, UP leased to BN a 1.0-mile segment of the Lead between milepost 32.0 and milepost 33.0 and the spur to PSC's plant.² The lease was amended in 1999 to permit BNSF, as BN's successor, to serve a recycling center located on the spur. UP states that the proposed discontinuance of the subject segment will not affect the 1-mile segment of the Lead and the spur leased to BNSF. UP will also continue serving shippers on the Lead located east of Eagle Mine.

¹ UP also notes that the Lead had been considered as a potential route for commuter rail between Denver and Boulder. But, according to UP, a regional planning study preferred BNSF's main line as a route for commuter rail.

² See Burlington Northern Railroad Company—Lease Exemption—Union Pacific Railroad Company, STB Finance Docket No. 32857 (STB served Apr. 23, 1996).

UP indicates that the discontinuance will impact two shippers of scrap metal that are located on the subject segment: David Joseph Company (David Joseph) and Columbine Iron and Metals, Inc. (Columbine).³ According to UP, David Joseph leases the land for its operations from Columbine. Columbine has no spur of its own. Instead, that shipper uses David Joseph's track facility.

David Joseph operates as a contractor for UP, sorting, storing and reshipping scrap material that UP provides from its rail operations. UP says that rail movements to and from David Joseph are for the railroad's exclusive benefit.⁴ UP indicates that David Joseph is closing its facility on the segment in September 2001 and is relocating its operations to a facility in Utah that is also served by UP.

According to UP, Columbine shipped 17 carloads of scrap metal in 2000 and one carload in 2001. In 2000, UP reports earning \$29,138 in revenue from 17 Columbine carloads and incurring costs totaling \$84,436, for a net avoidable loss of \$55,298. For the base year, from May 1, 2000, to April 30, 2001, UP reports earning revenues of \$20,922 from 12 Columbine carloads and incurring costs totaling \$77,842, for a net avoidable loss of \$56,920. UP indicates that it has been advised that Columbine is closing its facility and selling its property. The carrier asserts further that, even if Columbine continues to operate, it would be unable to ship by rail because David Joseph would likely salvage the spur line that Columbine used for rail shipments. UP also notes that a significant portion of Columbine's property will likely be condemned as part of a project to widen Interstate Highway 25.

UP states further that discontinuing service over the line segment will also enable the Colorado Department of Transportation (CDOT) to go forward with plans to widen Interstate Highway 25. The segment currently runs over Interstate Highway 25 on a bridge located near Eagle Mine. UP asserts that, if it is permitted to discontinue serving the segment, its bridge could be removed, saving CDOT substantial funds and time in completing the project. In a letter filed July 9, 2001, CDOT supports the proposed discontinuance, confirming that it would realize substantial savings if UP's bridge were removed. UP says that it has agreed with CDOT that, if service is resumed over the segment, the carrier has the right to build and will pay for a new bridge over Interstate Highway 25.

UP notes further that there are no indications that future traffic will ever occur from additional shippers to justify the costs necessary for continued rail operations.

³ UP states that it served copies of its petition on David Joseph and Columbine.

⁴ David Joseph's shipments appear to contain "company materials" for which UP does not earn revenue or incur avoidable costs. See Illinois Central Gulf Railroad Company—Abandonment—Between Bemis, TN and Coffeyville, MS, Docket No. AB-43 (Sub-No. 62F) (ICC served Oct. 8, 1981).

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, rail service may not be discontinued without prior Board approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from an abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving petitioners of the costs of maintaining and operating the line [49 U.S.C. 10101(5), and (9)]. Other aspects of the rail transportation policy will not be adversely affected. An exemption will also facilitate CDOT's plans to widen Interstate Highway 25.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power. David Joseph is relocating its operations to a new facility in Utah. Apparently, Columbine is selling its facility and will no longer require rail service. Nevertheless, to ensure that David Joseph and Columbine are informed of our action, we will require UP to serve a copy of this decision on these shippers within 5 days of the service date of this decision and certify to us that it has done so. The discontinuance will not affect the 1-mile segment of the Lead and spur which are leased to BNSF. UP will continue to serve shippers on the Lead located east of Eagle Mine. Given our market power finding, we need not determine whether the proposed discontinuance is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, we will impose the employee protective conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979), as a condition to granting this exemption.

UP has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on August 31, 2001.

In the EA, SEA noted that the U.S. Department of Commerce, National Geodetic Survey (NGS), has identified one geodetic station marker that may be affected by the proposed discontinuance. SEA recommended that a condition be imposed requiring that UP notify NGS 90 days prior to any salvage or demolition activities that may disturb or destroy this marker so that plans can be made for its relocation.

No comments on SEA's recommendations were filed by the due date. We will impose the condition recommended by SEA. Based on SEA's recommendations, we conclude that the proposed discontinuance, if implemented as conditioned, will not significantly affect either the quality of the human environment or conservation of energy resources.

Because this is a discontinuance proceeding and not an abandonment, we need not consider offers of financial assistance (OFA) to acquire the line for continued rail service,⁵ trail use requests, or requests to negotiate for public use of the line.⁶

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by UP over the above-described 12.21-mile line, subject to the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), and subject to the condition that UP consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station marker.

2. UP is directed to serve a copy of this decision on David Joseph and Columbine within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An OFA under 49 CFR 1152.27(c)(1)⁷ to subsidize continued rail service must be received by the railroad and the Board by October 29, 2001, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,000. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope:
"Office of Proceedings, AB-OFA."

5. Petitions to stay must be filed by November 5, 2001. Petitions to reopen must be filed by November 13, 2001.

⁵ The OFA provisions for a subsidy to provide continued rail service do apply to discontinuances.

⁶ We note, however, that the Board of County Commissioners for Boulder County has notified SEA that it is interested in converting the right-of-way into a recreational trail.

⁷ See Aband. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997).

6. Provided no OFA has been received, this exemption will be effective November 18, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary